

# PARENTS' BILL OF RIGHTS

Provided by Indiana Attorney General Todd Rokita



A roadmap for Hoosier parents and caregivers  
to exercise their legal right to direct their  
education Edition 2.0 Updated November 2021





## Student and Parent Rights

### Preamble

Dear Indiana Parent,

Thank you for all you do, including raising and protecting our children, who are any society's greatest and most valuable asset. We cherish our kids and would do anything to keep them safe, happy, and prepared for the future. In fact, it's our solemn duty as parents. As fellow parents, my wife Kathy and I understand that duty, along with the joy and the hassles you experience in executing it. The family unit is the vital building block of a free society. "We the Parents" have the duty to raise our families and are primarily responsible for what and how our children learn. It is not the government's job to raise our children, even if it wants to do so.

Having your child's school and its employees work against you as you raise your family according to your Hoosier values shouldn't be allowed. Rather, schools should play a supporting role to parents as we lead in raising and educating our children. Teachers, administrators, and school board members work for us in this regard, not the other way around.

Therefore, it is of utmost importance that we understand our legal rights to effectively oversee and participate in the part of our children's education that occurs outside the home, including in government schools. As parents, we possess certain rights and responsibilities when it comes to overseeing the education of our K-12 students. State and federal law afford certain protections and guarantees under the First Amendment to assure children's fundamental rights are not infringed.

We also have the right and expectation that our children will receive a proper and accurate understanding of our nation's history and governmental institutions, consistent with state and federal law. The Office of the Indiana Attorney General ("OAG") recognizes how the current national discourse regarding political and social issues has created negative and polarizing effects on teachers, administrators, students, and families. We also have a right to make decisions on and consent to care and medical treatment of our children, including in a school setting.

As such, the OAG recognizes the importance in advising parents how to engage in meaningful civil discourse with school leaders to effect changes that will ultimately benefit Indiana schools, parents, and our children. Education policy should accurately reflect the values of Indiana families while meeting the mandatory requirements set by Indiana law.

Our participation in our children's education is the most critical factor in assuring school accountability under the law. This Parents' Bill of Rights provides a roadmap for parental engagement and serves as an educational resource for our participation in our children's educational experience. This installment includes answers to questions we received in response to the first edition of this publication, such as explaining social-emotional learning, open access to educational records, opting out of curriculum, and filing civil rights complaints. This edition also provides a section on parents' rights as they pertain to medical decisions for their children, including access to student health records, vaccination requirements, and educational accommodations. Future editions are scheduled to cover religious liberty issues in schools and options for education freedom in Indiana.

If the OAG can provide further assistance on these rights, contact us by calling (317) 232-6201 or visiting [www.in.gov/attorneygeneral/](http://www.in.gov/attorneygeneral/).

Very truly yours,

A handwritten signature in black ink, reading "Todd Rokita".

Todd Rokita  
Parent  
Attorney General of Indiana

The information contained in this Parents' Bill of Rights is for educational purposes and should not be construed as legal advice

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## Parent Education Bill of Rights

1.

You have the right and expectation to question and address your child's school officials via letters, electronic communications, and in-person meetings. You also have the right to attend publicly designated meetings with proper notice of the meetings provided.

2.

You have the right and expectation to question and review the curriculum taught in your child's school by questioning your local school board and school administrators during public comment periods at publicly designated meetings.

3.

You have the right and expectation that the academic curriculum taught in your child's school aligns with Indiana and federal law.

4.

You have the right and expectation to participate in the selection and approval of academic standards for the State of Indiana.

5.

You have the right and expectation to access educational materials and curriculum taught to your child in the classroom.

6.

You have the right to run as a candidate for your local school board.

7.

You have the right to make decisions regarding vaccinations and immunizations for your child.

8.

You have the right and expectation to make medical care decisions on behalf of your child.

9.

You have the right and expectation to receive your child's student health records.

10.

You have the right to receive special education services on behalf of your child with a disability.



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## Questions and Answers

### Indiana School Curriculum and Academic Standards

#### **Q: What are the roles of local school boards, superintendents, and principals?**

**A:** A school corporation includes the school board, its members, school administrators, and any other aspects of the school district. The superintendent is the executive for the school corporation. The principal is the administrator of individual schools. All these educational stakeholders share the goal of ensuring that curriculum aligns with state law and meets state standards. Local school boards are widely regarded as the principal body capable of representing citizens in local educational decisions, including adopting curriculum presented to them by the superintendent. School boards have a duty in deciding what educational content is included in curriculum and what is left out. It is of extreme importance for parents to voice their concerns when curriculum deviates from approved academic standards.

#### **Q: How are Indiana academic standards and curriculum established?**

**A:** The Indiana General Assembly ("IGA") establishes the academic subjects and courses schools must teach under Ind. Code § 20-30-5-5. The Indiana Department of Education ("IDOE") is responsible for developing standards for these courses and subjects under Ind. Code § 20-19-2-14(1)<sup>1</sup>. The State Board of Education ("SBOE") formally adopts the standards developed by IDOE under Ind. Code § 20-19-2-14.5. School boards are charged with selecting a curriculum aligned to the standards adopted by SBOE for each subject or course. It is important to note that IDOE does not have the authority to unilaterally create courses, develop standards, or set policies not authorized by the IGA under the law. The IGA intended for IDOE to carry out the duties outlined in statute and any "policies and procedures established by the state board" set forth in statute. Ind. Code § 20-18-3-1. Additionally, local school boards may approve subjects and courses for schools within their district under Ind. Code § 20-30-5-21, but such subjects and courses may not conflict with or supplant those mandated by the IGA. If a school board exercises this power and approves an additional subject or course, the IGA may pass a law to prohibit the school corporation from doing so. In sum, schools and teachers are prohibited from teaching any subjects or courses that are not authorized in law or approved by their local school board.

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<sup>1</sup> See also Ind. Code § 20-19-2-14.5.



## Questions and Answers

### **Q: Can Indiana academic standards and curriculum be changed?**

**A:** Yes. Indiana academic standards are diverse and developed over time through IDOE standards revision committees. Pursuant to Ind. Code § 20-31-3-4, IDOE shall appoint an academic standards committee composed of subject area teachers, higher education representatives with subject matter expertise, *and parents* during the period when a subject area is undergoing revision. Pursuant to Ind. Code § 20-31-3-3, parents can provide comments and suggestions when academic standards are proposed for adoption. Under Indiana law, parents do not have a right to individual notice of these adoption meetings and committees but are urged to consult IDOE's website and subscribe to the Indiana Secretary of Education's weekly update letters (*see attached "Additional Parent Resources"*). This proactive approach is crucial for parents to hold school boards, school administrators, and legislators accountable and to assure oversight in reviewing standards. In addition, parents can be appointed to committees and provide input regarding how a particular standard may affect curriculum related to controversial theories, social advocacy groups, and political topics.

### **Q: What is the difference between an academic standard and academic curriculum?**

**A:** Generally, academic standards reflect benchmarks for student achievement and what students should learn at each grade level. Standards are used as the basis for curriculum, but Indiana Academic Standards are not curriculum. Rather, curriculum includes the textbooks, digital content, and materials selected by a school district and adopted by a local school board.

### **Q: How else are academic standards changed or modified? \***

**A:** Academic standards should reflect a holistic approach that is balanced and representative of all viewpoints. These standards may be reviewed and altered as necessary and consistently need to reflect the educational values and interests of Indiana parents. As discussed above, parents should take every opportunity to join IDOE committees and provide comments in response to IDOE solicited parent feedback when standards are revised or proposed for adoption. Ind. Code § 20-31-3-3. **The IGA has oversight of IDOE proceedings and the authority to change them. If parents find IDOE or its processes unresponsive or unworkable, Indiana law would need to be changed to accommodate a more open, collaborative process. If parents find this condition to be the case, they should contact their legislators and the legislators sitting on the Indiana House and Senate education committees.**



## Questions and Answers

### Q: What civics education and curriculum are required in schools? \*

**A:** Indiana law requires patriotism in multiple instances in schools. In Indiana, the United States flag shall be displayed in each classroom of every school in a school corporation. Indiana law also mandates that the governing body of each school corporation provide a daily opportunity for students to voluntarily recite the Pledge of Allegiance. A student is exempt from participation in the Pledge of Allegiance and may not be required to participate if the student chooses not to participate, or the student's parent chooses to have the student not participate. Ind. Code § 20-30-5-0.5. Moreover, Indiana law requires that each governing body procure a 4 feet by 6 feet United States flag for schools to display every day the school is in session. Ind. Code § 20-30-3. Indiana law provides discretion for schools that wish to place a poster or framed picture of the national motto of the United States, "In God We Trust," and a representation of the United States flag and Indiana state flag. Ind. Code § 20-30-3.

Regarding civics education, Indiana law instructs schools to provide education to students on the Constitution, American history, and American writings and documents. Specifically, in grades 6-12, every school must provide instruction on the Constitution of Indiana and the United States. Ind. Code § 20-30-5-1. Courses on the Constitutions should encompass the historical, political, civic, sociological, economical, and philosophical aspects of the Constitutions. A school corporation cannot censor certain American writings, such as the Constitution of the United States or the Declaration of Independence, and must allow those to be displayed or read by teachers and principals. Ind. Code § 20-30-5-3. Within two weeks following a general election, all students in grades 6-12 shall have five class period discussions concerning the system of governing in Indiana and the United States, methods of voting, party structure, election laws, and citizenship participation.

The IGA recently passed a law requiring a semester of civics education in grades 6, 7, or 8. Ind. Code § 20-30-5-7.3. SBOE will establish standards for civics education before July 1, 2022. Ind. Code § 20-19-2-14.7. The law establishes an Indiana Civic Education Commission to provide recommendations to IDOE and SBOE on implementation and review of best practices, pedagogy, and policy for civics education. Ind. Code § 20-19-10. Requiring only recommendations from this Commission leaves IDOE, SBOE, and local school boards with the sole discretion to develop standards and curriculum on civics education. The IGA should remain cognizant of the development of standards and curriculum as these standards "may only be changed by the express authorization of the general assembly." Ind. Code § 20-19-2-14.7(b). In other words, once the SBOE adopts the civic standards, only the IGA can change them. **If the final standards do not meet the expectations of Hoosiers, parents have the right to petition the IGA to pass legislation to correct them.**

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\* Denotes new content from previous edition

**Bold and underlined content indicates that a change in law would be required to obtain an answer different from the one given.**



## Questions and Answers

### Parental Consent and Educational Curriculum Not Aligned with Indiana Academic Standards

#### **Q: Can my child be taught certain curriculum or instruction without parental consent? \***

**A:** No. Pursuant to Ind. Code § 20-30-5-17(b), certain curriculum cannot be taught without parental consent. Curriculum and instruction related to a personal analysis, evaluation, or survey that is not directly related to academic instruction and that reveals or attempts to affect the student's attitudes, habits, traits, opinions, beliefs, or feelings aimed toward human sexuality, religious practices, and political affiliations, are all examples of curriculum needing prior parental consent. Recently, parents have observed firsthand these types of questions included on a Panorama survey completed by their children online during the COVID-19 quarantine. The survey asked students if they agreed or disagreed with controversial issues, such as government funding for Planned Parenthood, transgenderism in sports, and abortion. Schools or teachers that administer such surveys or questionnaires to students without parental consent violate Ind. Code § 20-30-5-17(b). Parental consent determinations on curriculum not directly related to academic instruction will first be made by the school corporation. Parents should work directly with school officials to discuss curriculum concerns. If a parent is dissatisfied with a school district's determination on curriculum, it may request a further determination by contacting the Indiana Department of Education ("IDOE") (*see attached "Additional Parent Resources"*). **Additionally, parents have the right to petition the IGA to expand the list under Ind. Code § 20-30-5-17 to include additional curriculum and instruction that requires parental consent.**

#### **Q: Are controversial political and social groups discussed in my child's classroom?**

**A:** Students cannot be asked to participate in or express their personal feelings regarding controversial political groups and politically affiliated social groups unrelated to academic instruction in a K-12 classroom without parental consent. Ind. Code § 20-30-5-17(b). Flawed ideologies that distort history and create controversy cannot be appropriately aligned with approved Indiana academic standards and student achievement, in part, because they lack the highest evidence-based practices as required by the federal Every Student Succeeds Act ("ESSA"). 20 U.S.C. § 6301 et seq. The ESSA requires that schools receiving certain grant funds use evidence-based practices in the classroom. Controversial social groups often contain political undertones and solicit political discussions in the classroom. As such, parents should utilize their voices and contact their child's school district when controversial political and social ideologies are brought into Indiana classrooms. The OAG is committed to supporting the rights of Indiana parents and the expectation that their children will receive an evidence-based education not contrary to Indiana or federal law.

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## Questions and Answers

The OAG has also issued an advisory opinion to state legislators that Black Lives Matter and affiliated organizations are unequivocally political organizations, and the display of such political materials by teachers in a classroom setting is unlikely to be protected under the First Amendment. The opinion also concludes that compelling students to speak about or take a position on controversial issues related to any partisan political group violates the student's First Amendment protections.<sup>2</sup> Ultimately, school corporations must ensure that their policies and procedures do not run afoul of Indiana law and constitutional protections. If a parent believes a school employee has violated their child's constitutional rights, they may be able to bring a lawsuit under Section 1983 of the Civil Rights Act. 42 U.S. Code § 1983. Please see the section titled "Parent Participation, Procedural Rights, and Remedies" for more information on how to file a civil rights complaint.

### **Q: What is Critical Race Theory ("CRT")? \***

**A:** The IGA established as a policy of the state that students receive equal and nondiscriminatory education opportunities. As such, children should expect a welcoming learning environment, nondiscriminatory teachings, equal protection under the Constitution, and equal educational opportunity under the law.

Indiana students are taught to reflect upon the important contributions and struggles of racial and minority groups, which are ingrained in the heart of American history. Our nation's history reflects a melting pot of experiences and cultural backgrounds from many ethnic and racial groups, all of whom have overwhelmingly shaped our great country for centuries.

CRT, the 1619 project, and similar concepts and lesson plans, however, are deeply flawed and controversial teachings. CRT is an ideological construct that analyzes and interprets American history and government primarily through the narrow prism of race. Like CRT, many related ideologies purport to teach diversity and inclusion but in reality, promote exclusionary tenets under the guise of euphemisms commonly referred to as "culturally responsive teaching," "intersectionality theory," "radical genderism," "microinequities," and "diversity and equity" initiatives. The 1619 Project aims to reframe the country's history by placing slavery at the center of the United States narrative. CRT's teachings are widespread, and their principles are not rooted in American history or known historical fact.

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<sup>2</sup> Official Opinion 2021-2, <https://www.in.gov/attorneygeneral/files/Official-Opinion-2021-2.pdf>.



## Questions and Answers

Rather, CRT, the 1619 Project, and other similar lesson plans attempt to create their own truths through Marxist ideologies, seeking to abolish individual rights and redistribute wealth. Such CRT teachings have a discriminatory effect on students who are inappropriately defined as having “privilege” or being “oppressors” based solely on their race. Teachers promoting such theories denigrate classes of students. Classroom instruction rooted in CRT teachings runs afoul of broad non-discrimination protections, equal protection, Title VI, and well-established Indiana law.

### **Q: What is Critical Theory (“CT”)? \***

**A:** CT is the foundation from which all these destructive theories flow and can be traced back formally to 1937 at the Frankfurt School, an institute known for its Marxist philosophies.<sup>3</sup> CT’s goal, like Critical Legal Theory (“CLT”) and CRT, is “to attack Western institutions and norms in order to tear them down.”<sup>4</sup> CT and CLT have spawned a wide variety of offshoots beyond CRT, including Critical Gender Theory, Latino Critical Theory, and many others. CRT is an outgrowth of Critical Theory (“CT”), which spawned CLT, from which CRT formed. The common theme of these CT offshoots is that they view all aspects of life through the lens of race or gender (containing two classes of people, the oppressed and the oppressor), therefore promoting the need to replace systems of western civilization with a Marxist worldview.

### **Q: What is Critical Gender Theory? \***

**A:** Similar to CRT, Critical Gender Theory (“CGT”) is a controversial and problematic teaching that originates from Marxist ideologies. It is a complex, theoretical perspective that analyzes society through the lens of power and unpacks the ways in which LGBTQ+ individuals are oppressed by heterosexuals through hegemonic structures and ideals. Gender under the framework of CT furthers the narratives of “structural oppression” and “power and privilege.” Students are taught that if they are comfortable being a boy or a girl they are members of an “oppressor group” (the cisgender) and that belief in binary sex is a form of bigotry and bullying.

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<sup>3</sup> Jonathan Butcher and Mike Gonzalez, *Critical Race Theory, the New Intolerance, and Its Grip on America*, The Heritage Foundation, 3-4, (December 7, 2020), <http://report.heritage.org/bg3567>.

<sup>4</sup> *Id.* at 4.



## Questions and Answers

### **Q: What is the difference between equality and equity? \***

**A:** “Equality” and “equity” sound similar but are functionally opposite. Equality refers to ensuring that individuals from all segments of society have an equal opportunity to attend school, apply for jobs, access public resources, and equal treatment under the law. On the other hand, equity is premised on the idea that people have different circumstances and abilities; thus, resources and opportunities must be allocated in accordance with these differences to reach an equal outcome. To achieve equity, some classes will gain privileges, and others will lose them. Under CRT and other theories, “equity” requires race-based discrimination because systematic racism has purportedly produced disparities between races.<sup>5</sup> The only remedy for CRT supporters is to treat the two individual classes of Americans differently based on race and forcibly produce equal outcomes.

### **Q: Is CT, CRT, CGT, or similar instruction permissible under Indiana academic standards? \***

**A:** Regarding Indiana academic standards, CT, CRT, CGT, or similar instruction is not aligned with any IDOE approved standard. Specifically, CRT is not expressly mentioned or aligned with any IDOE approved civics, history, or social studies standard.<sup>6</sup>

Indiana standards should reflect a holistic approach that is balanced and representative of all viewpoints and consistent with the curriculum approved by the IGA. Traditional U.S. history and civics curriculum should not be diluted with controversial and radical teachings of CRT in a K-12 classroom. Standards reflecting various civic and moral instruction must be crafted in ways that reflect equality, inclusivity, and diversity, while not maligning parents, students, and educators.

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<sup>5</sup> *How to Identify Critical Race Theory*, The Heritage Foundation, (accessed August 11, 2021), <https://www.heritage.org/civil-society/heritage-explains/how-identify-critical-race-theory>.

<sup>6</sup> Indiana Academic Social Studies Standards, Indiana Department of Education, (accessed August 6, 2021), <https://www.in.gov/doe/students/indiana-academic-standards/social-studies/>.



## Questions and Answers

Now more than ever, controversial political groups and theories, including whether CRT and other similar ideologies should be taught in schools, are a source of controversy. Some school administrators have denied teaching CRT and Marxist ideologies by name. Yet, parents with children in these same schools have provided examples that prove otherwise. This evidence includes, among many examples, a social studies lesson on the Civil War that instructs white students to stand and be recognized by the class as oppressors and called slaveholders. Another popular example is to assign anti-racist books in English class written by CRT advocates, including Ibram X. Kendi, author of *Stamped from the Beginning: The Definitive History of Racist Ideas in America* and Robin DiAngelo, author of *White Fragility: Why It's so Hard for White People to Talk about Racism*.

Parents also reported that schools use the "Teaching for Tolerance" curriculum, also known as "Learning for Justice."<sup>7</sup> This curriculum includes lesson plans that teach students to advocate for sanctuary schools, that the 1619 Project accurately reflects America's founding that whiteness is a racial identity with white privilege and power, and that refusing the concept of gender fluidity is wrong. Not only does the curriculum promoted by "Teaching for Tolerance" include discriminatory CRT elements, but progressive ideologies that conflict with some students' political and religious views. Several states have proposed and passed legislation designed to limit these controversial theories from classroom instruction. **Parents have the right to petition the IGA to pass similar legislation to address these ideologies' polarizing effect on education instruction.**

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<sup>7</sup> Jalaya Liles Dunn, *Our New Name: Learning for Justice*, Learning for Justice, (February 3, 2021), <https://www.learningforjustice.org/magazine/our-new-name-learning-for-justice>.

<sup>8</sup> See generally <https://www.learningforjustice.org/classroom-resources/lessons>; see also <https://www.learningforjustice.org/classroom-resources/learning-plans>.



## Questions and Answers

### **Q: What are Social-Emotional Learning Competencies (“SEL”), and how are they implemented in Indiana Schools? \***

**A:** SEL involves teaching and facilitating skills that students need to be successful at home, at school, and in the workplace. IDOE guidance defines social-emotional learning as “the process through which children and adults acquire and effectively apply the knowledge, attitudes, and skills to . . . understand and manage emotions, set and achieve positive goals, establish and maintain positive relationships, feel and show empathy for others, and make responsible decisions.”<sup>9</sup> Such attitudes and skills are difficult for people to develop, particularly children, yet schools have assumed this responsibility. SEL programs represent a fundamental shift in the role of teachers from educators to therapists and expand the reach of government into domains of the family. Some schools may use SEL programs to assume powers over students’ mental health development beyond their training, expertise, and authority under the U.S. Constitution and Indiana law.<sup>10</sup>

Indiana law provides authority for IDOE, along with other state stakeholders, to develop a children’s social, emotional, and behavioral health plan. Ind. Code § 20-19-5-1. This plan concerns, specifically, “comprehensive mental health services, early intervention, and treatment services.” Id. This plan is geared toward collaboration between the Department of Child Services, Department of Correction, and the Division of Mental Health and Addiction to assess and treat children’s social, emotional, and mental health issues. Id. While this law allows IDOE and other agencies to develop the Plan, it does not require schools to implement it, authorize school staff to perform mental health practices prohibited under existing laws, or create any new authorities for school-based personnel regarding identifying, assessing, treating, or tracking SEL related mental health issues.

IDOE must make recommendations to SBOE, who should adopt rules concerning the plan and conduct hearings on the implementation of the plan. Id. IDOE relies on this statute to support the application and integration of SEL competencies in schools. Indiana’s SEL competencies focus on five core social-emotional learning standards to foster the development of the following cognitive, affective, and behavioral domains: Self-Awareness, Social Awareness, Self-Management, Relationship Skills, and Responsible Decision-Making. In addition, Indiana adds two competencies built on an educational neuroscience foundation: Sensory Integration and the Mindset.

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<sup>9</sup> Christy Berger and Lisa Truitt, *Indiana’s Social-Emotional Learning Competencies: Serving the Whole Child*, Indiana Department of Education, (accessed September 22, 2021), <https://inacac.org/resources/Documents/Indiana's%20Social-Emotional%20Learning%20Competencies%20Serving%20the%20Whole%20Child.pdf>

<sup>10</sup> Robert Pondiscio, *The unexamined rise of therapeutic education: How social-emotional learning extends K-12 education’s reach into students’ lives and expands teachers’ roles*, p 9, (October 13, 2021), <https://www.aei.org/research-products/report/the-unexamined-rise-of-therapeutic-education-how-social-emotional-learning-extends-k-12-educations-reach-into-students-lives-and-expands-teachers-roles/>.



## Questions and Answers

### Q: Is SEL mandatory in Indiana schools? \*

**A:** Certain curriculum and recommendations made by IDOE, such as with SEL competencies, are discretionary. IDOE is only tasked with making recommendations regarding school social, emotional, and behavioral health plans. Ind. Code § 20-19-5-2. There is no provision provided under Ind. Code § 20-19-5-1 mandating SEL competencies in Indiana classrooms. However, the IGA passed legislation requiring certain career readiness and career development standards to be taught in grades K-12 (“Indiana Employability Skills Standards”). Ind. Code § 20-30-5-14. These standards are in addition to the required academic standards developed by IDOE pursuant to Ind. Code § 20-31-3-2. IDOE worked with the Department of Workforce Development to draft the Employability Standards, and they were adopted by the SBOE. Ind. Code § 20-30-5-14(c).

IDOE included three of the seven SEL competencies (which are discretionary) into the Indiana Employability Standards (which are mandatory). This created a backdoor for IDOE to require schools to teach these three SEL competencies as part of the state’s adopted standards. Ind. Code § 20-19-5-1. These skills standards include 1) Regulation – being able to recognize and manage one’s emotions, 2) Connection – being able to demonstrate the ability to network with others through social awareness and cultural sensitivity, and 3) Collaboration – being able to work well with others in a team.

In summary, SEL competencies are not included as part of the adopted Indiana Academic Standards. However, three of these competencies have been established by IDOE and approved by SBOE to meet Indiana’s Employability Skills Standards, which are required to be included by schools in the curriculum. **If parents don’t want the Employability Standards under Ind. Code § 20-30-5-14 to include SEL, they have the right to petition the IGA to prohibit IDOE from adopting SEL practices as a means of meeting these standards. Additionally, a model set of employment standards and curriculum could be selected by the IGA and inserted verbatim into Ind. Code § 20-30-5-14(c) to replace the Employability Standards adopted by the SBOE.**

### Q: What are “culturally responsive methods” of teaching? \*

**A:** Under Ind. Code § 20-28-3-0.3, “culturally responsive methods” refer to methods that use the “cultural knowledge, experiences, *social and emotional learning needs*, and performance styles of diverse students to ensure that classroom management strategies and research-based alternatives to exclusionary discipline are appropriate and effective for the students.” (emphasis added). Indiana educators can use SEL as part of a culturally responsive method of teaching. See Ind. Code §§ 20-28-3-3.5; 20-31-6-1; 20-31-6-2. These competencies, however, must be taught and applied in the classroom in a non-discriminatory fashion. **Parents have the right to petition the IGA to revise and further define “culturally responsive methods” to foster positive classroom relationships and school climates.**

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\* Denotes new content from previous edition

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## Questions and Answers

### **Q: Are CT, CRT, CGT, or other controversial theories allowed to be taught through SEL? \***

**A:** No, but laws prohibiting such discriminatory teaching practices haven't stopped schools from teaching these controversial theories and concepts in SEL programs. According to complaints made to the OAG, discriminatory teachings, such as CRT and the 1619 Project, are consistently being backdoored into Indiana classrooms, contrary to state and federal law. It is important to understand that critical theory principles can be taught without being labeled as CT or CRT. For example, IDOE's guidance for Employability Skills Standards for grades 9-12 includes guidance for teachers that is aligned to elements of CRT, such as equity, activism, culturally responsive teaching behaviors, and a race-based viewpoint to approaching social situations and resolving conflict.<sup>11</sup> **If parents believe that the Employability Standards include CRT, they have the right to petition the IGA to correct this practice under the SEL statute. The Governor could also correct this deficiency since he appoints the Secretary of Education who oversees IDOE.**

Indiana schools have witnessed an influx of SEL model practices utilized as a means of introducing distorted theories and activities aimed at making students feel bad about themselves. These methods are impermissible, encourage unequal treatment of students under the law, and are misaligned with the educational policy goals established by the IGA. At its core, SEL should teach students skills promoting self-awareness, professionalism, personal management, and taking responsibility for student learning. Theories that denigrate a class of students have no place in the classroom and cannot be utilized as an SEL practice. It is imperative that parents get involved and learn what is being taught in their classrooms. **If parents believe this to be discriminatory, they have the right to petition the IGA to tailor the SEL statutes to prevent the manipulation of SEL that allows controversial teachings and theories into Indiana schools. Moreover, the narrowing of this language would further support parents' rights to determine the religious and moral formation of their children.**

### **Q: Can parents opt their children out of certain curriculum or SEL? \***

**A:** It depends. Certain curriculum mandated by the IGA under Ind. Code § 20-30-5-5 and Ind. Code § 20-30-5-6 must be included in Indiana schools,<sup>12</sup> IDOE is only tasked with making recommendations regarding school social, emotional, and behavioral health plans. Ind. Code § 20-19-5-2. As a result, certain curriculum and recommendations made by IDOE, such as with SEL competencies, are discretionary.

<sup>11</sup> Grade Nine-Grade Ten Employability Standards, Indiana Department of Education, (accessed September 22, 2021), <https://www.doe.in.gov/sites/default/files/wf-stem/grade-nine-grade-ten-employability-skills-standards-final.pdf>.

<sup>12</sup> See "What curriculum can parents opt-out of in school?" for explanation of mandatory curriculum.



## Questions and Answers

Local school boards may also adopt locally approved curriculum pursuant to Ind Code § 20-26-3 provided it does not conflict with mandatory Indiana academic standards. This curriculum may not replace or amend any mandatory curriculum or otherwise supplement approved IDOE academic standards. If a school board adopts SEL as a locally approved curriculum, it has the option of making it mandatory. Local school boards decide the procedures for notice and options for parents to opt-out of locally approved curriculum. **If parents decide that a locally adopted curriculum should not be mandatory, they have the right to petition the IGA to legislatively prohibit schools from doing so. Moreover, the IGA could decide such locally approved curriculum should not be taught and legislatively prohibit the school district from teaching it.**

### Q: What curriculum can parents opt-out of in school? \*

**A:** Parents can opt-out of evaluations or surveys on political affiliations, religious beliefs or practices, mental or psychological conditions, sexual behaviors, illegal behaviors, privileged or confidential relationships, and income if these evaluations and surveys are not related to academic instruction. Ind. Code § 20-30-5-17(b). Parents can also opt children out of instruction on human sexuality. Ind. Code § 20-30-5-17(c). Under state law, parents can only opt-out of these aspects of curriculum. Additionally, local school boards could allow parents to opt-out of additional activities and curriculum. Parents cannot opt-out of mandatory curriculum found at Ind. Code § 20-30-5. The mandatory curriculum referenced in this part of code includes all other courses and classes, such as math, science, government, English, history, etc. It also includes instruction in a variety of areas, including good citizenship, morals, bullying prevention, the Holocaust, Human Immunodeficiency Virus, safety, organ donation, and others.

As discussed above, school corporation powers (governed by local school boards) are broad and expansive, in part, because each school corporation is unique in its demographics and populations they serve. As a result, school boards should provide additional opt-out provisions for locally adopted curriculum to meet the needs of the populations they serve. Ind. Code § 20-26-3-3(b). **Moreover, the IGA could expand current law and allow parents to opt-out of more types of surveys and evaluations or types of instruction. Parents also have the right to petition the IGA to allow for opting-out of surveys even if the topic, such as political affiliations and religious practices, is related to academic instruction. These requirements could also be changed to require parents to opt-in instead of putting the onus on parents to opt-out.**



## Questions and Answers

### Access to Public Records and Indiana's Open Door Law

#### **Q: How do I obtain a copy of my child's school curriculum?**

**A:** Contact your local school district. Indiana's Access to Public Records Act ("APRA"), Ind. Code §5-14-3-1 et seq., also provides the framework for requesting information from a governmental agency. Moreover, APRA states that, "it is the public policy of the state that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." Generally, school curriculum can be requested through your child's school district. School officials should provide you with a copy of approved curricula and address any concerns. You may also direct public record requests related to K-12 school academic standards to IDOE. However, some public records may not be disclosed under various exemptions or may be disclosed at the discretion of the Department. Some records are confidential by statute, while others may be protected by state or federal law. School districts have a statutory responsibility to tell you whether the records requested are "disclosable" or "nondisclosable." You have the right to view and copy all disclosable records. Schools must properly reference a statutory basis for non-disclosure of all or part of a public record to you.

#### **Q: How can I obtain my child's lesson plans and activities in school? \***

**A:** A parent may obtain lesson plans and records of activities by contacting school administrators and teachers directly. A parent may also obtain these materials through a public record request, pursuant to Ind. Code § 5-14-3-1 et seq. However, these records may not exist in many circumstances because not all schools require daily lesson plans to be submitted or maintained. As such, parents are encouraged to continue a dialogue with teachers on what is being taught and what activities and lessons are experienced at school.

#### **Q: How else can I inquire about the curriculum taught to my child?**

**A:** As a parent, you may have the opportunity to provide comment and express concerns at public school board meetings. A "meeting" is a public forum accessible under Indiana law to any interested member of the public. The Open Door Law, under Ind. Code 5-14-1.5-1, states that government agencies must hold official meetings of a majority of their governing body, such as council or board meetings, publicly. This includes local school boards.



## Questions and Answers

Meetings occur whenever a majority of the school board meets for the purpose of taking “official action upon public business.” “Official action” includes receiving information, deliberating, making recommendations, establishing policy, making decisions, and taking final action. While currently not required under the law, local school boards often encourage public participation and consider public comments before taking official board action.

Parents can also participate and provide comment at advisory committees created by statute to advise the school board. Committees appointed directly by the school board or its president must follow the Open Door Law requirements.

### **Q: Is public notice of a school board meeting required?**

**A:** Yes. Forty-eight (48) hours’ advance notice is required. The posted notice should include the date, time, and place where a school board will convene. Notice must be posted at the meeting location. Lack of adequate notice constitutes a violation of the Open Door Law.

### **Q: Who can bring a complaint alleging a violation of the Open Door Law?**

**A:** Any person aggrieved by a public agency’s action may make a complaint. Any person may also, prior to filing a lawsuit, seek an opinion from the Indiana Public Access Counselor on whether a meeting of a school board complied with the Open Door Law.

### **Q: Must a school board post its meeting agenda?**

**A:** Pursuant to the Open Door Law, a school board that uses an agenda must post a copy of the agenda at the entrance of the location of the meeting before the meeting begins. The use of an agenda is not mandatory and can be amended. In addition, a school board must describe each agenda item specifically during a meeting and may not refer solely to an agenda item by number. The Open Door Law does not prohibit a public agency from changing or adding to its agenda during the meeting.



## Questions and Answers

### **Q: Can a parent request a modification to the agenda?**

**A:** Yes. A parent may request a school board modify its agenda to address a discussion item of particular concern. However, if the school board utilizes an agenda, the agenda must be posted outside the location of the meeting before the meeting begins. The school board may decide to consider requests to modify or add agenda items during the public comment portion of the meeting or as proposed by an individual board member. A majority vote is necessary to add or amend agenda items. A parent may also request a school board to consider a particular agenda item before the meeting commences by contacting the school board's president or secretary. The school board has the authority to decline this request and the law does not provide for an appeal of its decision. **If parents want more control over setting the agenda at school board meetings, they have the right to petition the IGA to create it legislatively.**

### **Q: What is a consent agenda? \***

**A:** A consent agenda is an exception to the requirement that the school board must describe each agenda item in detail on the agenda. A consent agenda is a board meeting practice that groups routine business and reports into one agenda item. The consent agenda can be approved in one action, rather than approving motions on each item separately. Past practices by some boards may have included items such as the approval of curriculum into a consent agenda, believing it to be a routine business item. As a result, it is important for parents to thoroughly review consent agenda items listed on a board meeting agenda.

### **Q: Can the public prevent a consent agenda item vote? \***

**A:** Typically, consent agendas are for routine items and exist for efficiency purposes. Agenda items known to be of great interest to parents and members of the local community should be placed on the full agenda to provide transparency and opportunity for comment. However, there is no state law that requires it. Individual board members can also object to the consent agenda and offer a motion to move consent agenda items to the full agenda. Parents and members of the public typically cannot prevent board votes regarding properly noticed and posted board agenda items, but certainly can voice any concerns during a public comment period. **Parents have the right to petition the IGA to place limitations on the use of consent agendas in the interest of public access.**



## Questions and Answers

### **Q: Are school boards required to allow parents to speak at school board meetings and respond to their comments? \***

**A:** Under Indiana's Open Door Law, local governing bodies are not required to consider public comment. However, if the local school board or state board of education is required by law to hold a public hearing versus a public meeting, they may be required to hear public comment. For example, the state board of education is required to hold a public hearing and take comment when adopting rules. Regular school board meetings, however, are public meetings, thus they are not required to take public comment.

Generally, school boards will not respond in depth to public comments immediately following comments for efficiency reasons. The board may also want time to consider the comments before responding. However, sometimes the board votes on an item at the same meeting when accepting public comments. In those instances, the board members likely won't have adequate time to reflect upon comments before voting. Currently, there is no requirement that a board responds to public comments under Indiana law. However, it is certainly good practice to allow public comments, and parents should exercise that right when presented with the opportunity. **It is up to the discretion of the school board how to proceed. For greater input, parents have the right to petition the IGA to provide an exception to the Open Door Law to require school boards to hear and consider comments at meetings.**

### **Q: What rights do I have as a parent to express concerns to school board members and school officials? \***

**A:** The Supreme Court has recognized the vital role that citizen participation in government plays and the guarantee of that participation, including the free discussion of governmental affairs, under the First Amendment. The First Amendment protects a parent's right to free speech when public comments are permitted at school board meetings. Public meeting policies typically include rules related to conduct and decorum and public comment parameters, which often include time-limits and limiting comment to noticed agenda items. Although not required, school boards have historically provided an opportunity for public comment. When permitted, school boards are urged not to pick and choose which comments they accept and which they reject. A parent cannot be thrown out of a school board meeting simply because he or she disagrees, antagonizes, or harshly criticizes a school board or members of a school board during a public comment period. Board action censoring and suppressing parent comments made during a public comment period will ultimately raise free speech violation concerns under the First Amendment.



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Parents' ability to question and address school officials and school board members is not limited to public comment periods at school board meetings. Parents can express concerns to school officials in-person, by letter, phone, or via other electronic communication like email, text, or social media. Civil and respectful dialogue is always encouraged when disagreements arise between school officials and parents. Any speech containing obscene language or that threatens, incites, or encourages others to violate the law will be subject to school censor and potentially reported to law enforcement. However, schools cannot constrain speech or expression simply because it is disagreeable. Specifically, regarding social media platforms, schools cannot act as policing forces of what speech is permissible and what speech is punishable by social media ban. To do so would constitute a violation of the First Amendment.

**Q: Can a school block a parent from receiving information from social media or other releases of information?**

**A:** No. Generally, schools cannot block or prevent parents from receiving governmental information that is otherwise available to the public and from commenting on social media. Blocking parents from social media violates the Constitution because it prevents parents from receiving publicly available information and prevents them from participating in a government-sponsored public forum



## Questions and Answers

### Parent Participation, Procedural Rights, and Remedies

#### **Q: How can parents impact academic standards and content? \***

**A:** The standards revision process is a collaborative one. As such, parents interested in serving on IDOE committees should contact IDOE via their website. *See* "Additional Resources" for more details. Parents should maintain a record of the date of contact, whether you received a response, the date on which a reply was received, and if denied participation, the reason given. School curriculum should reflect this collaborative approach, so students are exposed to contrasting or opposing viewpoints. Parents may also comment on academic standards by commenting at school board meetings during public comment periods, expressing concerns to school officials, contacting IDOE, and contacting their local legislators. Intrinsic to the legislature's duty to enact mandatory and optional curriculum studies is a duty to review and refine those standards, as well as identify subject matter requiring prior consent for a student's participation under Ind. Code § 20-30-5-17(b). **Parents should review curriculum adopted by local school boards and, if objectionable content is found, have the right to bring it to the attention of their legislators. As noted earlier, the IGA has the authority to enact the subjects, courses, and curriculum students learn and do not learn at school.**

Of particular note, effective April 8, 2021, the state board must coordinate with IDOE to establish standards for civic education not later than July 1, 2022. Ind. Code § 20-19-2-14.7. The civic standards established may only be changed by the express authorization of the IGA. It is imperative that parents discuss civics curriculum with their children and contact their local legislators with questions and concerns. Parents are also encouraged to visit the resources provided at the end of this guide and visit the IDOE website regularly for updates to state standards and opportunities to apply for membership on IDOE standards committees.

#### **Q: What are some ways I can hold my local school board accountable regarding curriculum and content?**

**A:** Follow their social media accounts, review their public comments, and review school board meeting minutes. Contact your school board members directly and ask them their positions on the issues parents care about and how they are preventing these issues from entering the classroom. Attending your local school board meetings and getting your elected officials on the record is helpful; however, it is imperative to understand the political undertones resonating within a school board itself. Grow your network of other parents and attend school board meetings as a group to share unified concerns.

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For example, if your school board has publicly opposed CRT and other controversial theories, continue to work with your school board to review curriculum so that CRT teachings cannot be introduced or masked in other materials or SEL competencies. Using the same example, be sure that your school board is not allowing CRT or similar Marxist ideology to be taught under some other name, remembering that it's not what it's called that matters, but the pedagogy (method) and content being utilized. Parents should also continue to request copies of curriculum and classroom content by contacting their child's teacher or school administrator.

### **Q: What other legal rights can I assert on behalf of myself or my child? \***

**A:** Indiana law prohibits segregation, separation, or discrimination by a public school against any of its students on the basis of race, creed, or color. Ind. Code § 20-33-1-5. Three important legal rights exist for all Indiana parents:

- 1) The First Amendment right to protect your child from compelled government speech in a school setting,
- 2) The Fourteenth Amendment right for all students to receive equal protection under the law, and
- 3) The Civil Rights Act of 1964 prohibits public institutions from discriminating on the basis of race.

In addition, parents should follow any available administrative processes provided by their school districts and seek written determinations. Parents may also have certain administrative rights under the Administrative Orders and Procedures Act ("AOPA"), which governs administrative proceedings and judicial review of certain decisions of IDOE and other State agencies. *See, e.g.,* Ind. Code § 4-21.5-2-0.1 to 6. AOPA includes procedural requirements for adjudications, sets out resolution of alleged violations of state rules or state statutes, and provisions for judicial review of agency actions. *Id.*

For complaints made with IDOE, an investigation may be conducted in accordance with Ind. Code § 4-21.5-2.5. The purpose of the investigation is to uncover facts with an eye toward a corrective plan or order and, if necessary, an enforcement action. *See* Ind. Code §§ 4-21.5-2.5-7 and -10. AOPA also provides for judicial review of a final agency decision or an "agency action," which is defined as "(1) the whole or part of an order, (2) failure to issue an order, or (3) an agency's performance of, or failure to perform, any other duty, function, or activity." Ind. Code § 4-21.5-1-4. Final IDOE decisions can be judicially reviewed by an appropriate Indiana court of competent jurisdiction.



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### **Q: How can I protect my child's free speech rights in school? \***

**A:** In addition to protections afforded under the federal constitution, the IGA has established a strong interest in protecting the free speech rights of students. Courts have long acknowledged the freedom of political expression among students in the school setting. Simply put, students do not shed their constitutional rights to freedom of speech or expression at the school doors. Of equal importance, students should never be compelled to confirm or declare certain personal beliefs. For example, a student should never be compelled by a school or school official to declare religious beliefs or political affiliations.

Parents should also be cognizant that First Amendment rights are not absolute and school corporations may reasonably regulate them, consistent with fundamental constitutional safeguards designed to maintain equal access to education and control disruptive conduct in schools. However, the banning of expression of one particular opinion or display, at least without evidence that it is necessary to avoid material and substantial interference with schoolwork or discipline, is not constitutionally permissible. For more information on students' First Amendment Rights, please see our advisory opinion on Black Lives Matter as a political organization.<sup>13</sup>

Any adopted school policy must be reasonable and implemented uniformly and consistently. A school should not arbitrarily select what political speech it wants to promote and what speech it wants to suppress. Parents should continue to advocate for school boards to adopt neutral policies. This uniform application will reduce concerns of First Amendment violations or potential claims about arbitrary school decision-making. Most importantly, the adoption of neutral policies helps support equality in education and the mission of all Indiana schools to provide the best education for all our children.

### **Q: What if I have a complaint about the curriculum taught at my child's school? \***

**A:** Parents or community members having questions, concerns, and complaints about any aspect of the operation of a school corporation, including curriculum, may contact the person having knowledge or responsibility of a particular situation. This would be the teacher first, then the school administrator closest to the situation in most cases. A school administrator may address a complaint related to curriculum by examining teacher lesson plans, written materials provided to students, and classroom discussion. Ultimately, a school administrator will determine whether curriculum is aligned with approved IDOE academic standards.

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<sup>13</sup> See Official Opinion 2021-2, <https://www.in.gov/attorneygeneral/files/Official-Opinion-2021-2.pdf>.



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If a satisfactory response is not received, then the parent or community member should take the issue to the next higher level of administration at the district level. After exhausting efforts to find a satisfactory response at the administrative level, the individual may bring the matter in writing to the attention of the school board president.

IDOE implements and oversees Indiana law related to school curriculum. Standards may be reviewed and altered as needed. Accordingly, interested parents may advocate why standards should be reviewed or modified through local school officials, board members, legislative representatives, and IDOE officials.

Written complaints regarding teacher conduct, including teaching curriculum not related to the Indiana Academic Standards, and educator licensing can also be made after fulfilling the above steps. IDOE has not adopted a formalized complaint process regarding curriculum but does maintain an online form with various topics parents can utilize, including "Student Education," "Student Learning," "Educator Licensing," and "Legal." IDOE will review and investigate upon receipt of a complaint submitted through this process.<sup>14</sup> **If parents desire a different process to register complaints against licensed teachers administered by an entity independent of IDOE, they have the right to petition the IGA to create it.**

**Q: What is Title VI of the Civil Rights Act, and why does it apply to education? \***

**A:** Title VI of the Civil Rights Act of 1964 ("Title VI") protects students who attend federally funded institutions from discrimination and race-based harassment. Title VI prohibits any institution receiving federal funding from discriminating or excluding individuals on the basis of race, color, or national origin.

**Q: How can Title VI be violated and how are complaints investigated? \***

**A:** The U.S. Supreme Court has held that any discrimination found to violate the Equal Protection Clause committed by an institution accepting federal funds also violates Title VI. Harassment of students on the basis of race, color, or national origin cannot be tolerated. Any such incidents are a major concern of the OAG. Racial harassment denies students the right to an education free from discrimination.

Furthermore, schools receiving federal funds may not retaliate against any person or student because he or she opposed an unlawful educational practice or policy, or made charges, testified, or participated in any complaint action under Title VI. A school or school district found to have retaliated in any way is considered in violation of Title VI.

<sup>14</sup> To submit a complaint, see <https://www.in.gov/doe/about/contact/>.



## Questions and Answers

A violation of Title VI can also occur if a school or school district is found to be responsible for creating a racially hostile environment. To establish a violation of Title VI due to a hostile environment, there must be a determination that 1) a racially hostile environment existed, and 2) the recipient of federal funds had actual or constructive notice and failed to respond adequately to address the racially hostile environment. If a violation is found, the school or school district may be required to adopt new policies and procedures to address the incident. Title VI also allows for a private right of action alleging discrimination, where a complainant may seek monetary damages in court.

### **Q: How else can I file a complaint if I feel my civil rights were violated? \***

**A:** You may file a complaint with the U.S. Department of Education's Office of Civil Rights ("OCR") or the Indiana Civil Rights Commission ("ICRC"). *See* "Additional Parent Resources" for more information about how to file a complaint.

### **Q: What civil rights laws does the U.S. Department of Education's Office of Civil Rights oversee? \***

**A:** The OCR investigates Title VI complaints to determine if an institution accepted, tolerated, or failed to correct instances of racial harassment, discrimination, or a racially hostile environment. The OCR enforces several federal civil rights laws that prohibit discrimination in programs or activities that receive federal financial assistance from the U.S. Department of Education.

Common OCR complaints of federal law relate to:

- 1) discrimination on the basis of race, color, and national origin as prohibited by Title VI of the Civil Rights Act of 1964;
- 2) discrimination on the basis of sex as prohibited by Title IX of the Education Amendments of 1972, and;
- 3) discrimination against persons with disabilities as prohibited by Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990.

These civil rights laws extend to all federally funded school systems, including elementary and secondary school systems.



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### **Q: Who can file an OCR discrimination complaint? \***

**A:** Any person or organization can file an OCR discrimination complaint. The person or entity filing the complaint need not be a victim of the alleged discrimination. They may complain on behalf of another person or group but must first obtain written consent from the individual or individual's parent or guardian.

A complaint must be filed within 180 days of the last act of discrimination or demonstrate good cause for why a complaint was not filed within the 180-day period.

OCR recommends (but does not require) a potential complainant to use an institutional grievance process before filing a complaint with OCR. School grievance processes vary from district to district, and some may be more informal than others. If a complainant uses an available institutional grievance process and also chooses to file the complaint with OCR, the complaint must be filed with OCR within 60 days after completion of the institutional grievance process.

### **Q: How can I file an OCR complaint? \***

**A:** OCR provides an online form which can be submitted online, mailed, or faxed: [www.ed.gov/about/offices/list/ocr/complaintintro.html](http://www.ed.gov/about/offices/list/ocr/complaintintro.html). Individuals or organizations can also write their own letter and include the following:

- The complainant's name, address and, if possible (although not required), a telephone number where the complainant may be reached during business hours;
- Information about the person(s) or class of persons injured by the alleged discriminatory act(s) (names of the injured person(s) are not required);
- The name and location (city and state) of the institution that committed the alleged discriminatory act(s); and
- A description of the alleged discriminatory act(s) in sufficient detail to enable OCR to understand what occurred, when it occurred, and the basis for the alleged discrimination.



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### **Q: What potential damages/remedies are available? \***

**A:** If OCR determines that a recipient failed to comply with applicable laws, OCR will contact the recipient and will attempt to secure the recipient's willingness to negotiate a voluntary resolution agreement. A resolution agreement may include remedial actions, terms and conditions, and ways of addressing noncompliance identified by OCR. OCR will monitor the recipient's implementation of the terms and obligations of the resolution agreement to verify that the remedial actions agreed to by the recipient are properly implemented.

Failure to agree or correct noncompliance may result in OCR initiating proceedings to suspend, terminate, or refuse federal financial assistance to the recipient, or may refer the case to the DOJ.

### **Q: What civil rights laws does the Indiana Civil Rights Commission oversee? \***

**A:** Among other things, the Indiana Civil Rights Law ("ICRL") explicitly conditions the ICRC's exercise of its enforcement powers to incidents where a person has engaged in an unlawful discriminatory education practice. Ind. Code § 22-9-1-3(1) and Ind. Code § 22-9-1-6(j)3.

Per Ind. Code § 22-9-1-2(b), the purpose of the law is to promote "equal opportunity without regard to race, religion, color, sex, disability, national origin, or ancestry through reasonable methods."

The ICRL defines a discriminatory practice as follows:

- (1) The exclusion of a person from equal opportunities because of race, religion, color, sex, disability, national origin, ancestry, or status as a veteran;
- (2) A system that excludes persons from equal opportunities because of race, religion, color, sex, disability, national origin, ancestry, or status as a veteran;
- (3) The promotion of racial segregation or separation in any manner, including but not limited to inducing or attempting to induce for profit any person to sell or rent any dwelling by representations regarding the entry or prospective entry in the neighborhood of a person or persons of a particular race, religion, color, sex, disability, national origin, or ancestry; or
- (4) A violation of IC 22-9-5 that occurs after July 25, 1992, and is committed by a covered entity (as defined in IC 22-9-5-4) I.C. § 22-9-1-3(l).



## Questions and Answers

### **Q: How can I file an ICRC complaint? \***

**A:** Complaints of discrimination can be submitted by phone, by mail, in person, or through an online complaint form. ICRC outlines its basic process in screening and reviewing claims on its website. *See “Additional Parent Resources” for more information.*

### **Q: Who can file an ICRC discrimination complaint? \***

**A:** Similar to OCR complaints, anyone can file a complaint. Complaints are pre-screened for jurisdiction.

### **Q: What potential damages/remedies are available? \***

**A:** If the ICRC determines that a person has committed an unlawful discriminatory practice, it shall order that person to “cease and desist from the unlawful discriminatory practice and require the person to take further affirmative action . . . .” Ind. Code § 22–9–1–6(j). The ICRC may order the person who committed unlawful discrimination to pay damages and post a notice of Indiana’s public policy concerning civil rights and the person’s compliance with that policy, among other actions.

### **Q: What if I believe that my child or I have been the subject of retaliation based on a complaint of discrimination? \***

**A:** Most civil rights statutes contain anti-retaliation provisions that protect individuals who complain about unlawful discrimination. For example, with respect to alleged race discrimination by schools, Title VI’s implementing regulations state that no recipient of federal funding “shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by [Title VI] . . . because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under [Title VI].” 34 C.F.R. § 100.7(e). As discussed above, OCR has jurisdiction over complaints of retaliation under Title VI, or in the alternative, individuals may file suit in state or federal court.

Similar anti-retaliation provisions exist under Indiana law. With respect to complaints under Indiana’s Civil Rights Laws, retaliation is specifically prohibited under the statute, “[t]he commission shall prevent any person from discharging, expelling, or otherwise discriminating against any other person because the person filed a complaint, testified in any hearing before this commission, or in any way assisted the commission in any matter under its investigation.” Ind. Code § 22–9–1–6(g).



## Questions and Answers

### Q: How can I run for my local school board?<sup>15</sup>

**A:** Accountability in our schools requires each parent to examine what content is being presented to children in the classroom and what elected officials and school administrators are doing to maintain the best interests of our children. Parents interested in running for their local school boards should be educated on CRT and other controversial theories and work to hold school officials accountable for the content being taught in their schools.

The ability to run for local school board depends on the local school corporation. The procedures for selecting school board members are usually set forth in the “school corporation organization plan” adopted by the school corporation during the school consolidation process of the 1950s and 1960s, and as subsequently amended. Ind. Code § 20-23. In certain school corporations, all or some of the school board members are appointed rather than elected by the voters. Ind. Code § 20-23-4-28. All school corporations that elect school board members elect those members at the same time as the general election. Some school board members are elected “at large” for the entire school corporation, while others are elected to represent specific districts that are only part of the school corporation’s territory. In all cases, candidates for school board appear on the ballot without a party designation. Ind. Code § 20-23-4-29.1. **If parents want school board candidates’ party affiliation to be displayed on the voting ballot, they have the right to petition the IGA to create a law requiring it.**

School board candidates in certain jurisdictions must consult state statute for specific and detailed candidate qualifications and election procedures: Gary, Hammond, Indianapolis, Lake Station, South Bend, Mishawaka, East Chicago. See generally Ind. Code §§ 20-23-12 through 17.2. In all other cases, candidates must 1) reside in the school corporation for at least one year before the election; 2) be registered to vote; and 3) not have committed a felony (with certain exceptions). See Ind. Code § IC 3-8-1. A candidate has numerous filing requirements outlined explicitly in the Indiana Election Division’s Candidate Guide.

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<sup>15</sup> This answer was, in part, taken from and credited to the Indiana Election Division. 2020 Indiana Candidate Guide, (accessed August 11, 2021), <https://www.in.gov/sos/elections/files/2020-Candidate-Guide.MOVEDPRIMARY5.pdf>.



## Questions and Answers

### **Q: What is the Secretary of Education's Role?**

**A:** The Secretary of Education is appointed by the governor and serves as the chief executive officer for the Department of Education. The individual appointed must 1) reside in Indiana for two years before the appointment, 2) demonstrate leadership and success in the administration of education, 3) possess an earned advance degree, and 4) is or has been a teacher, principal, or superintendent.

The Secretary is a new administrative role as the Superintendent of Public Instruction previously served in this capacity as a statewide elected official. The IGA passed a law in 2017 to transition from an elected Superintendent of Public Instruction to an appointed Secretary of Education but set the transition date at 2025. After the previous Superintendent announced she would not seek a second term, legislators accelerated the timeline to 2021.

### **Q: How does an individual become a member of the Indiana State Board of Education?**

**A:** The bipartisan board is composed of eleven members, including the Secretary of Education who was elected in 2021 by the Board to sit as the Board's chair. Eight members are appointed by the Governor and must include: 1) at least six appointees with professional experience in the field of education; 2) not more than one appointee from a particular congressional district; and 3) not more than five appointees belonging to the same political party. The remaining two board members are appointed by the Speaker of the Indiana House of Representatives and the President Pro Tempore of the Indiana Senate, respectively.

### **Q: How can I participate in the Indiana State Board of Education meetings?**

**A:** The State Board of Education shall, at its regular monthly business meetings, accept comment from any interested person on items that appear on the SBOE's agenda for that meeting as well as general public comment. A person who desires to speak must register on the meeting day before the meeting begins. Statements on agenda items are limited to five minutes, while general public comments are limited to three minutes in length. Written comments may be submitted to SBOE.



## Questions and Answers

### **Q: My child's school receives Title I funding. What rights does this provide?**

**A:** Title I funding from the federal Elementary and Secondary Education Act ("ESEA") provides financial assistance to local education agencies for children from low-income families to ensure that all children meet challenging state academic standards. This federal funding is allocated at the district level in each state. School districts in the highest poverty quarter have the highest total Title I allocations per formula-eligible child.

The ESEA, Section 1116, requires that parents be offered substantial and meaningful opportunities to participate in the education of their children and explicitly mandates parent consultation in all required planning, including the development of Title I applications, school-wide plans, and improvement plans for low-performing schools. Indiana schools receiving Title I funding should hold an annual meeting advising parents of their right to be involved in flexible meetings and planning of programs. Parents will also have an opportunity to develop policy in collaboration with the Title I school. Interested parents should work directly with school officials to assure transparency and adequate opportunity for their voices to be heard.

# PARENT MEDICAL RIGHTS

Provided by Indiana Attorney General Todd Rokita



A roadmap for Hoosier parents and caregivers  
to exercise their legal right to direct their  
education





## Questions and Answers

### Medical Decisions

**Q: Who has the authority to make medical decisions for children?**

**A:** Parents are best situated to understand the unique needs of their children and to make decisions in their best interest. Accordingly, a parent or legal guardian has the right to make medical decisions for his or her child, including the right to refuse treatment except in life-threatening situations. The Fourteenth Amendment to the U.S. Constitution provides a parent or legal guardian with this fundamental right to make decisions regarding their minor children's care, custody, and control. In Indiana, an adult is considered to be a person at least eighteen (18) years of age. Ind. Code § 1-1-4-5(a)(1). Otherwise, consent must be obtained from the minor child's parent or legal guardian before receiving medical treatment.

**Q: Is there ever a time where medical care of a child at school does not require parental consent?**

**A:** Yes. Parental consent is not required in instances where students need emergency nursing care or when an illness or accident occurs during school hours or on or near school property. Ind. Code § 20-34-3-6. Also, when a parent is not available to give consent and delay in treatment would be life-threatening or cause the child serious harm, consent is presumed. Consent must be obtained for any ongoing treatment.

**Q: What medical care can children receive at the nurse's office at school without parental knowledge?**

**A:** A school may appoint physicians or nurses who are registered to practice nursing in Indiana with the responsibility of providing emergency care for students when an illness or accident occurs. Ind. Code § 20-34-3-6. This medical care may be provided during school hours on or near school property. Id. The governing body of a school corporation may provide for inspection of students by the school physician to determine if a child suffers from disease, disability, decayed teeth, or other defects that may affect the student's efficiency in schoolwork. Ind. Code § 20-34-3-4. However, if a parent furnishes an examination from an Indiana certified physician at the beginning of the school year, the child is exempt from the exam. Ind. Code § 20-34-3-5.



## Questions and Answers

### **Q: When can parental authority to make medical decisions for their children be challenged?**

**A:** Medical caretakers have an ethical and legal duty to advocate for the best interests of the child when parental decisions are potentially dangerous to the child's health, imprudent, neglectful, or abusive. As a general rule, parental decisions are challenged when decisions place the child at significant risk of serious harm. More specifically, parental decisions may be challenged under Indiana law when seriously endangering a child's physical or mental health. *See* Ind. Code § 31-34-1-2.

### **Q: When can the State make medical decisions for a child?**

**A:** The State's authority to intervene in medical decisions is found in State law permitting a court to declare that a child is neglected for various circumstances under which a child becomes a child in need of services. *See* Ind. Code § 31-34-1. Generally, a child needs additional government services if, before the child becomes eighteen (18) years of age, the child is subjected to neglect, physical or emotional abuse, endangerment, or is the victim of a crime. In Indiana, the Department of Child Services files juvenile court cases when abused children are in need of services ("CHINS"). Ind. Code § 31-34-9. A CHINS adjudication under Ind. Code § 31-34-1-1 requires three basic elements: 1) that the parent's actions or inactions have seriously endangered the child, 2) that the child's needs are unmet, and 3) that those needs are unlikely to be met without State coercion. Id. Trial court adjudications can be appealed to the Indiana Court of Appeals.



## Questions and Answers

### Student Education and Health Records

**Q: Under the Family Educational Rights and Privacy Act (“FERPA”), what information must be disclosed to parents?**

**A:** FERPA is a federal law that governs the privacy of student education records. FERPA's privacy protections extend to “education records” and “personally identifiable information” contained therein, with such protections held by the parent/guardian until the student reaches the age of 18 or enrolls in postsecondary education (thereby becoming an “eligible student”). 34 CFR § 99.3; 34 CFR § 99.5(a)(1). “Education records” are broadly defined to include records “directly related” to a student, maintained by an educational agency or institution or by a person acting for such agency or institution. 20 USC § 1232g(a)(4); 34 CFR § 99.3. As such, parents are entitled to documents and records directly related to the student that are maintained in the school’s possession.

School policies regarding the sharing of student information (as opposed to a document or record) should reflect a transparent approach to keep parents informed of a child’s social, mental, and educational progress. Teachers and administrators should communicate concerns about matters which may adversely affect a student’s education and a student’s home environment directly with parents.

**Q: Under FERPA, what other information regarding my child’s medical history can be disclosed to third parties without my consent?**

**A:** FERPA permits disclosures necessary to protect the health and safety of students or other individuals. A school district may consider the totality of the circumstances pertaining to a threat to the health or safety of a student or other individuals. If the educational agency or institution determines that there is an articulable and significant threat to the health or safety of a student or other individuals, it may disclose information from education records to any person whose knowledge of the information is necessary to protect the health or safety of the student or other individuals. 34 CFR § 99.36.

Alternatively, if an educational official determines that a disclosure must be made but also determines that the health and safety exception (or other applicable exception) does not apply, then the official should obtain written consent from a parent, guardian, or adult student prior to the disclosure. This “health or safety emergency” exception to FERPA’s general consent requirement is limited in time to the period of the emergency and generally does not allow for a blanket release of personally identifiable health information, otherwise known as “protected health information” or “PHI,” from student education records.

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## Questions and Answers

In addition to the health and safety exception, FERPA allows schools and educational agencies to disclose personally identifiable information, including mental, physical, and medical health information, to teachers and other “school officials,” without parental consent, if these “school officials” have been determined to have “legitimate educational interests” in the education records. See 20 U.S.C. § 1232g(b)(1)(A); 34 CFR §§ 99.7(a)(3)(iii) and 99.31(a)(1)(i)(A). This language is broad and allows for disclosures of this personal health information to be shared widely without parental consent. **FERPA is a federal law; thus, the IGA cannot change it. However, parents wanting control over the disclosure of their child’s mental, physical, and medical health information collected by the school have the right to petition the IGA to prohibit schools from including such information in the student’s education record.**

Finally, it is worth noting that educational records maintained on children with disabilities may be covered under both FERPA and the Individuals with Disabilities Education Act (IDEA), a federal law that provides heightened protection to students with disabilities. See generally 34 CFR part 300. IDEA’s confidentiality provisions are similar to FERPA but broader. The IDEA governs how states and public agencies provide early intervention, special education, and related services to children with disabilities. As such, it is critical for parents to understand how to advocate for their child when a school fails to provide services related to their child’s unique needs. See “Additional Resources” for more information on how to file an IDEA complaint on behalf of students with disabilities. Unlike the IDEA, FERPA has been interpreted to not include a private cause of action, and therefore individuals cannot file a civil lawsuit based on an alleged FERPA violation. However, parents and students over 18 years old can submit a complaint directly to the U.S. Department of Education. Violations of FERPA, such as an educational institution failing to allow a parent access to their child’s education record or refusing to correct inaccurate information included in the record can be resolved through the complaint process. See “Additional Parent Resources” for information on how to file a FERPA complaint.



## Questions and Answers

### **Q: What is HIPAA, and does it apply to my child's information in a school setting?**

**A:** The Health Insurance Portability and Accountability Act ("HIPAA") is a federal law that governs the privacy of PHI. HIPAA applies to "covered entities," which is a term used to describe health care providers, health plans, and healthcare clearinghouses. In addition, HIPAA requirements may extend to insurance carriers and business associates. *See* 45 C.F.R. § 160.102(b).

In most cases, schools are not entities covered by HIPAA, and therefore HIPAA requirements generally do not apply to schools. In addition, education records covered by FERPA are explicitly excluded from the definition of PHI. This is true even if PHI happens to be contained within an education record. As a result, schools and their on-site nursing services are generally not required to comply with the HIPAA privacy protections because the school maintains health information only in student health records that are "education records" under FERPA and, thus, not 'protected health information' under HIPAA. **As noted above, the IGA could prohibit schools from including medical, physical, or mental health information in the student's education record. While this would not make the information protected by HIPAA, it could not be shared as part of an education record.**

### **Q: In regard to COVID-19, what student information can be shared by my child's school or school district to local health officials without parental consent?**

**A:** In addition to reporting requirements implemented by the State Department of Health pursuant to Ind. Code § 16-41-2-1, a school or school district may determine that a real and significant threat exists to the health or safety of a student or greater student population related to COVID-19. As a result, under FERPA it is permitted by law to disclose, without prior written consent, PHI from student education records, positivity tests, and contract trace data to appropriate officials at a public health department who need the information to protect the health or safety of the student (or another individual). Public health department officials may be considered "appropriate parties" by an educational agency or institution under FERPA's health or safety emergency exception, even in the absence of a formally declared health emergency. Generally, public health officials are considered appropriate parties to whom PHI from education records may be non-consensually disclosed under FERPA's health or safety emergency exception.



## Questions and Answers

### Vaccinations in School

#### **Q: Can vaccinations of minors be mandated?**

**A:** Indiana law does not require COVID-19 vaccination for Indiana's K-12 students. However, Indiana law requires that every child enrolled in an accredited K-12 school be immunized against certain diseases unless the parent objects on religious grounds or the immunization would be detrimental to the health of the student. Ind. Code § 20-34-4-2. Mandatory immunizations are determined by the Indiana State Department of Health and adopted by IGA. *Id.* The Department may also expand or modify the list of communicable diseases that require documentation of immunity as medical information becomes available that would warrant the expansion or modification in the interest of public health. Before November 30 of each year, the Department is required to publish a two (2) year calendar of immunization requirements and recommendations. The calendar must include: (1) the immunization requirements for the following school year; and (2) recommendations for immunization requirements for the year subsequent to the following school year. Ind. Code § 20-34-4-2(c). The calendar timeframe described above may not apply in the event of an emergency as determined by the state health commissioner. Ind. Code § 20-34-4-2(d). In addition, public schools (elementary and secondary) are required by Ind. Code § 20-34-4-1 to keep an immunization record for each student.

#### **Q: Can a school district perform COVID-19 testing without parental consent?**

**A:** No. Indiana schools cannot conduct virus testing on children without permission from a child's parent or legal guardian. Administering virus testing without parental consent would violate a child's constitutional rights, specifically, the Fourteenth Amendment to the U.S. Constitution, which provides a fundamental right for a parent or legal guardian to make decisions regarding their minor children's medical care and treatment.

#### **Q: Can children be vaccinated without parental permission?**

**A:** No. As discussed above, minor children must have permission from parents or legal guardians regarding health care decisions, including vaccinations. *See* Ind. Code § 16-36-1-3(a).



## Questions and Answers

### **Q: What is an Emergency Use Authorization (EUA)?**

**A:** An Emergency Use Authorization (EUA) is a mechanism to facilitate the availability and use of medical countermeasures, including vaccines, during public health emergencies, such as the current COVID-19 pandemic. Under an EUA, the U.S. Food and Drug Administration ("FDA") may allow the use of unapproved medical products, or unapproved uses of approved medical products, in an emergency to diagnose, treat, or prevent serious or life-threatening diseases or conditions when certain statutory criteria have been met, including that there are no adequate, approved, and available alternatives. Once submitted, FDA will evaluate an EUA request and determine whether the relevant statutory criteria are met, considering the totality of the scientific evidence about the vaccine that is available to FDA. *See generally*, 21 U.S.C. § 360.

### **Q: What does full FDA approval of the COVID-19 vaccine mean, and what does it mean for schools?**

**A:** Vaccine development is a complex science. Different than an EUA request, full FDA approval of vaccines is granted over time. Generally, full approval is granted when the FDA has compiled and reviewed additional scientific data and evidence to support the use of vaccines. Full approval is granted following a comprehensive review of data, vaccine efficacy, and safety standards showing that the benefits of the vaccine are greater than its risks. Ultimately, the FDA's endorsement of the COVID-19 vaccine is its full endorsement that the vaccine can be manufactured reliably, safely, and with consistent quality.

Any additional vaccine requirements for Indiana school-aged children would require legislative approval and a determination by the Indiana State Department of Health that additional vaccine requirements are in the interest of public health. Ind. Code § 20-34-4-2(b). In addition, the Department would be required to adopt rules under Ind. Code § 4-22-2 specifying certain immunization requirements, required ages, dosages, and methodology for documenting proof of immunity. Ind. Code § 20-34-4-2(e). The Department of Health must follow the requirements of Ind. Code § 4-22-2 in issuing these rules, including public notice and comment and the submission of the rule to the OAG for approval. In addition, a public hearing is required for rule adoption. Parents may attend and comment on the proposed rule "through the presentation of oral and written facts or argument." Ind. Code § 4-22-2-26(c). The attorney general can disapprove the rule for a variety of reasoning, including that the rule was (1) adopted without statutory authority; (2) adopted without complying with the requirements concerning the adoption of rules; or (3) violates another law. Ind. Code § 4-22-2-32. **The IGA has the authority to prohibit vaccine mandates for school-aged children. If parents believe a vaccine, such as the COVID-19 vaccine, should not be required for school-aged children, they have the right to petition legislators to create legislation to prohibit it.**

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## Questions and Answers

### Educational Accommodations

#### **Q: What is required in schools for children with qualified disabilities?**

**A:** Parents of students with disabilities are entitled to certain protections under the law. Title II of the Americans with Disabilities Act (“ADA”) prohibits state and local governments (such as public school districts, public colleges, and universities) from discriminating against persons with disabilities. In part, Title II provides that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” *See* 42 U.S.C. § 12132. Indiana public schools are required to provide accommodations and auxiliary services for students with qualified disabilities.

Indiana public schools must also assure every student with a disability receives a free appropriate public education (FAPE) guaranteed by the Rehabilitation Act of 1973 and the Individuals with Disabilities Education Act (IDEA). If you feel your child is not being granted his or her rights by not having his or her disability recognized or not being provided reasonable accommodations, parents and guardians may request a due process hearing according to their school’s Section 504 procedures or file a complaint with the OCR. For more information, *See* “Additional Resources”.

#### **Q: Are there exceptions for students with disabilities if masks are mandated?**

**A:** Yes. Public schools must make accommodations for students with disabilities who, because of their disability, cannot safely wear a mask.

The ADA protects qualified individuals with disabilities from discrimination by state and local government entities. Section 504 of the Rehabilitation Act applies to entities that receive public funds, and requires public schools to provide reasonable accommodations, so students with a disability receive similar educational services as their peers. Under Section 504, a student with a disability who cannot safely wear a mask because of their disability should not be required to wear one. For example, a person who would be physically unable to remove their mask if their breathing became obstructed should be able to obtain a medical exemption. Another example would be a person who would have respiratory distress issues if a mask were to be worn over the mouth and nose. Students requiring an assistive device for mobility or communication that prevents the person from wearing a mask may be entitled to an exemption.

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## Questions and Answers

Furthermore, students with sensory disabilities or mental health conditions may be eligible for an exemption from the mask mandate due to a legally qualified disability.

It's likely every school district will have its own policies regarding medical and disability exemptions from masks. Please communicate with your child's school for specific guidance on complying with its procedures for recognizing mask exemptions. A public school may be in violation of the ADA and Section 504 by failing to make reasonable modifications to its mask policies. Parents of children with disabilities should consult with an attorney regarding whether their child is entitled to an accommodation or modification of school policy. Such modifications are necessary to allow immunocompromised students equal access under the law to educational services.

### **Q: How can parents object to masks in schools?**

**A:** Parents can make their grievances known by addressing their school board members at publicly designated meetings during public comment periods and at the ballot box when a school board seat is up for election. Parents may also exercise their First Amendment right by communicating their concerns through electronic mail, letters, and other forms of communication. In Indiana, the absence of specific directions and/or limitations from the IGA leaves elected school boards the power to determine their respective school district's policy on mask-wearing. **If parents are unhappy with this decision-making process, they have the right to petition the IGA to pass legislation prohibiting mask mandates.**

School districts should also consider the long-term effects mask mandates have on young children, both socially and academically. Indiana school districts should be data-driven and not mandate masks arbitrarily. In considering the decision to mask children, there are no official guidelines that local school boards must follow. In general, local school board members consider several factors, including reliance on their own judgment, guidance from public health officials, the infection rates among children and community spread, and changing circumstances that merit lessening of restrictions. Although this is not always the case, it is best practice for school board decisions to reflect parent input and feedback from the communities they serve.



## Questions and Answers

### **Q: How can I request an Individualized Education Plan “IEP” on behalf of my child?**

**A:** An “IEP” means a written document, developed, reviewed, and revised by a case conference committee, which includes parents and school personnel, in accordance with 511 IAC 7-42. The plan describes how a student with a disability shall access the general education curriculum, if appropriate, and the special education and related services needed to participate in the educational environment.

A parent can initiate a request to the school principal or special education administrator for an educational evaluation, either verbally or in writing, to determine if a student is eligible for special education services. After a parent makes a request, the school district has ten (10) instructional days to provide the parent with written notice that includes a statement and other factors relevant to their determination for proposing or refusing to conduct an educational evaluation. The required components of an IEP are contained in 511 IAC 7-42-6. They require schools to consider the strengths of the student, concerns of the parent for enhancing the education of the student, the results and instructional implications of the initial or most recent educational evaluation, and other assessments of the student, and the academic, developmental, communication, and functional needs of the student. 511 IAC 7-42-6(b). Schools must also consider special factors such as positive behavioral interventions and supports and other strategies to address any of the student’s behaviors that impede the student’s learning or the learning of others.

### **Q: Can a school modify the requirements of an IEP?**

**A:** Schools must meet with parents periodically, but not less than annually, to review the student’s IEP and determine whether the student’s annual goals are being achieved. 511 IAC 7-42-9. Additional parent rights and remedies are outlined in rules and provide in part the right of parents to challenge proposed actions and changes to an IEP. See generally 511 IAC 7-42. Indiana law requires parent participation in meetings with school personnel implementing the IEP. In the event of disagreement, the process is outlined for parents to initiate mediation to resolve disputes and/or participate in a due process hearing. *See “Additional Resources”* for a link to the SBOE’s special education rules outlining the IEP process.



## Questions and Answers

### **Q: Can I revoke consent for the Special Education services my child is receiving?**

**A:** Yes. Parents can revoke consent at any time when their school is providing special education services to their child. Specifically, an IEP can be reviewed and revised or terminated by a parent who revokes consent for special education and related services. See generally 511 IAC 7-42. For revocation to occur, it needs to be in writing and provided to school staff. However, before a school can stop providing the services, it must first provide the parent with written materials explaining the consequences of such a revocation. Once the parent receives the written notice describing the potential consequences of revoking the services, the school must then end the services to the student. The student will then be placed in a general education classroom and receive education services as a non-disabled student. When the student is placed in general education classes, the student's safeguards under Article 7 and the Individuals with Disabilities Education Improvement Act will cease. Indiana's special education rules can be read in their entirety at Title 511 IAC 7-32 through 47.

### **Q: What is homebound education?**

**A:** Homebound education focuses on the rights of students to receive an education where circumstances may preclude them from physically attending school. Homebound instruction is defined as "instruction provided by a licensed teacher to students, in accordance with 511 IAC 7-42-11 and 511 IAC 7-42-12, including students without disabilities, who are unable to attend school." Homebound instruction may be provided: 1) at a student's home, 2) at a hospital, or 3) at another site. Homebound instruction may be provided "in person or by any other technology systems." 511 IAC 7-32-45.

### **Q: In what circumstances must a school offer homebound education when a student is unable to attend in person?**

**A:** The IGA (and by delegation the SBOE) has recognized three general circumstances where students may be unable to attend school but are entitled to some form of homebound instruction:

1. Students with long-term or permanent disabilities who are entitled to receive services under the Individuals with Disabilities Education Act, 20 U.S.C.A. § 1400 et seq.;
2. Students with injuries and temporary or chronic illnesses who are entitled to receive services under § 504 of the Rehabilitation Act of 1973, 29 U.S.C.A. § 794; and
3. Students without disabilities who are nevertheless unable to attend school. 511 IAC 7-32-45.



## Questions and Answers

### **Q: Can I request homebound instruction if my child becomes ill for an extended period of time?**

**A:** Yes. The SBOE adopted a rule requiring all students with injuries and temporary or chronic illnesses that preclude their attendance in school, including students who are not eligible for special education and related services, to be provided with instruction.

Pursuant to 511 IAC 7-42-12(b), in order to be eligible for services, the parents of the student must do the following: Before instruction for a student unable to attend school can begin, the parent must provide the school corporation with a written statement from a physician (which includes a doctor of osteopathy) with a valid, unlimited license to practice medicine, or a Christian Science practitioner, that states one (1) of the following:

1. The student has a temporary illness or injury that will require the student's absence from school for a minimum of twenty (20) consecutive instructional days. If the:
  - (A) illness or injury occurs less than twenty (20) instructional days prior to the end of the school year; and
  - (B) student needs instruction to meet promotion or graduation requirements; the physician's statement must indicate that the student will be unable to attend school through the end of the current school year.
2. The student has a chronic illness or other medical condition that will require the student's absence for an aggregate of at least twenty (20) instructional days over the period of the school year.



## Questions and Answers

### Sexual Behaviors and Abortion

#### Q: Can a school teach my child about human sexuality?

**A:** Yes. Pursuant to Indiana law, a school is required to teach abstinence-based instruction regarding human sexuality. Instruction on human sexuality or sexually transmitted diseases requires a teacher to teach abstinence from sexual activity outside of marriage as the expected standard for all school-age children. In addition, instruction will focus on abstinence from sexual activity as the only certain way to avoid out-of-wedlock pregnancy, sexually transmitted diseases, and other associated health problems. By law, school instruction will also include the best ways to avoid sexually transmitted diseases and other associated health problems by establishing a mutually faithful monogamous relationship in the context of marriage. Ind. Code § 20-30-5-13.

Ind. Code § 20-30-5-13 does not authorize “comprehensive” sex education, including curriculum aligned to the National Sex Education Standards<sup>16</sup> endorsed by Planned Parenthood. States, such as California, have passed legislation requiring “comprehensive” sex education, which includes curriculum requiring teachers to “affirmatively recognize different sexual orientations and be inclusive of same-sex relationships in discussions,” and “teach about gender, gender expression, gender identity, and the harm of negative gender stereotypes.”<sup>17</sup> While Indiana law does not authorize “comprehensive” sex education or curriculum aligned to the National Sex Education Standards, it does not explicitly prohibit them. However, it should be noted that schools are prohibited from asking students about their gender identity or sexual behaviors or attitudes in sex education classes, or any other classes, under Ind. Code § 20-30-5-17(b). **If parents want to ensure sex education classes do not teach concepts outside of those specifically authorized in law, they have the right to petition the IGA to pass legislation updating Ind. Code § 20-30-5-13 to specify what is not permitted in sex education classes.**

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<sup>16</sup> *National Sex Education Standards: Core Content and Skills, K-12, Second Edition*, Future of Sex Education, (2020), <http://www.advocatesforyouth.org/wp-content/uploads/2020/03/NSES-2020-web.pdf>.

<sup>17</sup> AB 329 Pupil Instruction: sexual health education, California State Legislature, (2016), [https://leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=201520160AB329](https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201520160AB329).



## Questions and Answers

### **Q: Can a school teach my child about human sexuality without parental consent?**

**A:** No. Consent is required. Before a school may provide a student with instruction on human sexuality, the school must provide the parent of the student with a written request for consent of instruction. Ind. Code § 20-30-5-17(c). The parental consent form must accurately summarize the contents and nature of the instruction on human sexuality. Parents have the right to review and inspect all material related to instruction on human sexuality. If parents do not respond to the notice concerning the instruction on human sexuality, the child will receive the instruction. Parents must formally opt-out to remove their child from the instruction. Ind. Code § 20-30-5-17(d). **Parents have the right to petition the IGA to amend this statute to require schools to request parents to opt-in to certain instruction on human sexuality, rather than putting the onus on parents to opt-out.**

### **Q: Can my child be prescribed birth control without parental consent?**

**A:** No. Parents must provide consent for their unemancipated minor child to be prescribed any form of contraception.

### **Q: Can minors get access to abortions without parental consent?**

**A:** No. Indiana law requires a minor seeking an abortion to receive the notarized written consent of the parent for the performance of an abortion. Ind. Code §§ 16-34-2-4; 16-18-2-267.

### **Q: Can my child be referred to or counseled on abortions at school?**

**A:** No. Referral and counseling for abortions require parental consent, just as all other medical treatments. School corporations that enroll in a program to use federal funds under the Medicaid program are prohibited by Indiana law from providing abortions, abortion counseling, abortion referrals, abortifacients, or contraceptive services. Ind. Code § 12-15-1-16.



## Additional Parent Resources<sup>18</sup>

### School Curriculum and Parent Rights

- *Indiana academic standards* information:  
<https://www.in.gov/doe/students/indiana-academic-standards/>
- IDOE guide for Social-Emotional Learning:  
<https://inacac.org/resources/Documents/Indiana's%20Social-Emotional%20Learning%20Competencies%20Serving%20the%20Whole%20Child.pdf>
- *Indiana employability skills standards* information:  
<https://www.in.gov/doe/students/indiana-academic-standards/employability-skills/>
- IDOE newsletters:  
<https://www.in.gov/doe/about/news/newsletters/>
- Statement from Secretary of Education Katie Jenner:  
<https://lawrencecentral.itschools.org/announcements/a-message-from-the-indiana-secretary-of-education>
- Resource on culturally responsive teaching:  
<https://democracyeducationjournal.org/cgi/viewcontent.cgi?referer=https://scholar.google.com/&httpsredir=1&article=1023&context=home>
- Title I schools and parent rights information:  
<https://www.in.gov/doe/grants/title-i/>
- Title I list of schools (2019):  
<https://www2.ed.gov/about/overview/budget/titlei/fy19/indiana.pdf>
- Indiana Code Title 20 Education:  
<http://iga.in.gov/legislative/laws/2021/ic/titles/020>

### Parent Procedural Rights and Remedies

- Indiana Public Access Counselor contact:  
<https://www.in.gov/pac/contact-us/>
- Handbook on Indiana's Access to Public Records:  
<https://www.in.gov/pac/files/PAC-Handbook-2017.pdf>

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<sup>18</sup> IDOE is undergoing a website migration. Website resources will be updated as necessary, last visited on November 10, 2021.



## Additional Parent Resources

- Indiana's Administrative Rules and Procedures Act, Ind. Code § 5-14-3:  
<http://iga.in.gov/legislative/laws/2021/ic/titles/005#5-14-3>
- Indiana's Open Door Law, Ind. Code § 5-14-1.5:  
<http://iga.in.gov/legislative/laws/2021/ic/titles/005#5-14-1.5>
- Indiana Election Division's candidate guide:  
<https://www.in.gov/sos/elections/files/2020-Candidate-Guide.MOVEDPRIMARY5.pdf>
- Indiana State Board of Education meeting and materials:  
<https://www.in.gov/sboe/board-meetings-and-materials/board-meetings-and-materials/>
- Indiana State Board of Education meeting instructions:  
[https://www.in.gov/sboe/files/SBOE\\_Public\\_Comment\\_Procedures\\_08\\_05\\_15.pdf](https://www.in.gov/sboe/files/SBOE_Public_Comment_Procedures_08_05_15.pdf)
- Office of Civil Rights complaints:  
<https://www2.ed.gov/about/offices/list/ocr/complaints-how.html>
- United States Department of Education FERPA complaint form:  
<https://studentprivacy.ed.gov/file-a-complaint>
- Individuals with Disabilities Act ("IDEA") complaint process:  
<https://sites.ed.gov/idea/regs/b/b/300.153>, *see also*:  
<https://www.in.gov/doe/students/special-education/special-education-complaint-511-iac-7-45-1/>
- Indiana civil rights complaints:  
<https://secure.in.gov/apps/icrc/discrimination>
- Budgets for Indiana schools and school districts can be accessed at:  
<https://form9.doe.in.gov/public/home/dashboard?#>

## Medical Rights

- Information about how student health information may be shared:  
<https://www.doe.in.gov/sites/default/files/health/hipaa-or-ferpa-final-2019-2nded.pdf>
- General information regarding student privacy:  
<https://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html>

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## Additional Parent Resources

- Information about medical record privacy in elementary and secondary schools:  
<https://www.hhs.gov/hipaa/for-professionals/faq/513/does-hipaa-apply-to-an-elementary-school/index.html>
- Indiana Code concerning student health and safety, Ind. Code § 20-34:  
<http://iga.in.gov/legislative/laws/2021/ic/titles/020#20-34>
- IDOE student health services rule, 511 Ind. Admin. Code 4-1.5-6:  
[http://iac.iga.in.gov/iac\\_title?iact=511](http://iac.iga.in.gov/iac_title?iact=511)
- FDA's Emergency Use Authorization for Vaccines Explained:  
<https://www.fda.gov/vaccines-blood-biologics/vaccines/emergency-use-authorization-vaccines-explained>
- Guidance from the US Department of Ed regarding the comparisons between FERPA and IDEA:  
[https://studentprivacy.ed.gov/sites/default/files/resource\\_document/file/FERPA%20and%20Coronavirus%20Frequently%20Asked%20Questions.pdf](https://studentprivacy.ed.gov/sites/default/files/resource_document/file/FERPA%20and%20Coronavirus%20Frequently%20Asked%20Questions.pdf)
- To file a disability due process hearing request electronically with IDOE, parents can visit I-CHAMP  
(<https://ichamp.doe.in.gov/>).
- Information regarding IDOE's Special Education Due Process Hearing procedures:  
<https://www.in.gov/doe/students/special-education/special-education-due-process-hearing-511-iac-7-45-3-through-7-45-7/>.
- Information regarding IEP rules and procedures:  
<sup>18</sup> [http://iac.iga.in.gov/iac\\_title?iact=511](http://iac.iga.in.gov/iac_title?iact=511)

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